

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<b>JOSHUA STUMP,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>CIV-05-397-R</b>
	)	
<b>STATE OF OKLAHOMA, et al.,</b>	)	
	)	
<b>Respondents.</b>	)	

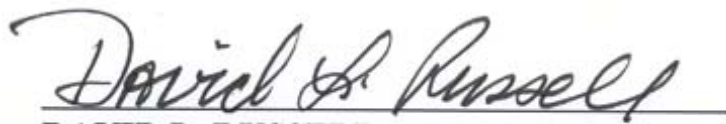
**ORDER**

Before the Court are the Report and Recommendation of United States Magistrate Judge Bana Roberts entered February 28, 2007 [Doc. No. 38] and Petitioner's Objection to the Report and Recommendation [Doc. No. 39]. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court reviews the Report and Recommendation *de novo* in light of Petitioner's Objection. Petitioner offers no evidence or argument to controvert the fact that he knew or should have known by May 19, 1999, at the latest, that he would not be eligible for parole until at least February 2007 and thus that he knew or should have known by May 19, 1999 that his counsel's alleged assurance or promise to him that he would be out of prison on parole within seven (7) to nine (9) years was false. Accordingly, the date on which Petitioner, in the exercise of due diligence, could have discovered the factual predicate for his claim of ineffective assistance of counsel was May 19, 1999, at the latest, and the one-year statute of limitations for filing his federal habeas petition began to run on that date. *See* 28 U.S.C. § 2244(d)(1)(D). Statutory tolling is not applicable and, for the reasons explained by the

Magistrate Judge, including but not limited to Petitioner's failure to diligently pursue his claim, equitable tolling is not warranted.

Therefore, the Report and Recommendation of the Magistrate Judge [Doc. No. 38] is ADOPTED in its entirety and the petition of Joshua Stump for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DISMISSED as time-barred pursuant to 28 U.S.C. § 2244(d).

**It is so ordered this 21<sup>st</sup> day of March, 2007.**

  
DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE